

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE AMERICAN REALTY CAPITAL
PROPERTIES, INC. LITIGATION

Civil Action No.: 1:15-mc-00040-AKH

DEFENDANT DAVID KAY'S MOTION TO DISMISS

Defendant David Kay, by and through his attorneys, submits this Motion to Dismiss the Amended Class Action Complaint (ECF No. 30, the "Amended Complaint") pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4 ("PSLRA").

In order to avoid burdening the Court with duplicative briefing, Mr. Kay incorporates legal arguments for dismissal set forth in the Motions to Dismiss and accompanying Memoranda of Law filed by certain Defendants, including those filed by (1) American Realty Capital Properties, Inc., ARC Operating Partnership, L.P., American Realty Capital Trust III, Inc., American Realty Capital Trust IV, Inc., and Cole Real Estate Investments, Inc. (the "ARCP Defendants")¹, (2) Defendants Christopher H. Cole, Marc T. Nemer, Jeffrey C. Holland, Stephan Keller, and D. Kirk McAllaster, Jr. (the "Former CREI Executives"), and (3) Defendants RCS Capital Corporation, RCAP Holdings, LLC, and Realty Capital Securities, LLC (the "RCS Defendants"). At this stage of the proceedings, Mr. Kay declines to adopt any factual characterizations other than those set forth in his own Memorandum of Law.

This motion is supported by the accompanying Memorandum of Law, as well as the Declaration of Jason R. Parish and attached exhibits, filed simultaneously herewith.

¹ The ARCP Defendants do not contest in their Motion that Plaintiffs have alleged Section 10(b) claims arising out of misstatements announced in ARCP's October 29, 2014 disclosure. (See ARCP's Mem. of Law at 2.) As further set out in the accompanying Memorandum of Law, Mr. Kay does contest such claims as to him.

Dated: May 29, 2015

Respectfully submitted,

/s/ James P. Gillespie

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